

**BEFORE THE INDIANA
BOARD OF SPECIAL EDUCATION APPEALS**

In the Matter of C.N. and the)
Fort Wayne Community Schools) **Article 7 Hearing No. 1167.00**

The hearing and appeal issue was determined to be:

Are the speech therapy services suggested by the school corporation adequate and appropriate for the needs of the student?

PROCEDURAL HISTORY OF THE DUE PROCESS HEARING

It should be noted from the outset that any references to the “Student” or the “Student’s representative” include the parent or parents of the student. It should also be noted that Fort Wayne Community Schools will be referred to as the “School.”

<i>June 9, 2000</i>	The Student filed a request for a due process hearing with the Indiana Department of Education (IDOE).
<i>June 12, 2000</i>	Curtis Leggett, Ph.D., was appointed Independent Hearing Officer (IHO) under 511 IAC 7-15-5.
<i>June 15, 2000</i>	A prehearing teleconference was held. At that time, the framing of the specific issue for the hearing was established and the time, date and location of the hearing were agreed upon. Hearing was set for July 18, 2000.
<i>July 18, 2000</i>	The due process hearing was conducted.

*August 7, 2000*¹ The IHO issued his written decision.

The due process hearing was conducted over one business day – July 18, 2000. The IHO found that at the time of the hearing, the Student was an eighteen-year-old. The Student was determined to be eligible for enrollment in the local public schools and continues to be eligible for special education services as a disabled child. The Student is currently enrolled by parental decision in a non-public school. The Student has received special education services through his current local public school agency, as well as years of service from previous school corporations.

During the last school year, the Student was eligible for and was receiving speech therapy services through the local public school agency. It was established that the areas of speech programming included, but were not limited to, articulation, intelligibility, and overall language skills appropriate for the Student’s developmental ability. The articulation goals for the Student had been similar for a number of years, his intelligibility was rated as fair to poor, depending on the communication circumstances, and his overall language development needs were in the “area of functional application in a naturalistic environment.” The Student’s current academic skills ranged from pre-school to primary school levels of performance with the lowest functioning noted in language related areas. Those currently working with the Student in the area of speech development confirmed the Student’s performance levels and speech therapy needs as expressed by individual education program goals.

The IHO made the following Conclusions of Law. These read as follows:

Conclusions of Law

1. The evidence and direct testimony available at the time of the Hearing provided clear and substantial demonstration that the student remains eligible under Title 511, Indiana State Board of Education, Article 7, Rules 3-16 (effective date: May 26, 1995), for services

¹ There is some confusion over the date of the IHO’s decision. The Date of Hearing Report is written as August 3, 2000 and yet the IHO signed the decision on August 7, 2000.

under Section 7-11-2 Communication Disorders of that statute. It is also clear that the student was eligible for potential services under Section 7-11-11 Other Health Impaired and/or Section 7-11-6 Hearing Impairment under that same statute.

2. Evidence and direct testimony established that on or about May 11, 2000, a case conference procedure was undertaken concerning the student. No evidence or direct testimony established that this case conference procedure was not conducted in an appropriate manner under 511 IAC 7-12-1.

3. Evidence and direct testimony clearly established that the student is eligible and is in need of services under 511 IAC 7-13-5 (related services) even though the student's enrollment is in a non-public school setting. Further, evidence and direct testimony established that the current goals and objectives in the area of concern for the Hearing (speech therapy) appropriately represent the student's educational needs.

4. Evidence and/or direct testimony demonstrated that, due to the age of the student (developmental and chronological), the progress of the student (or in this case, the lack of significant change in speech/articulation related goals for a significant period), and the documented need for the student's program to demonstrate retention of achieved speech skills and/or to engage in developing "repair skills" in the functional use of his communication abilities, there is no reason to believe that the level of services in the Individual Education Plan generated at the May 11, 2000, case conference meeting, are not adequate to provide educational benefit to the student under the obligations placed on the school corporation by Title 511, Indiana State Board of Education, Article 7, Rules 13-16 (effective date May 26, 1995).

The IHO's Order reads as follows:

1. The Individual Education Plan developed for the student during the May 11, 2000, case conference procedures is to be considered in place and valid for the 2000-2001 academic year.

PROCEDURAL HISTORY OF THE APPEAL

The IHO's written decision was issued on August 7, 2000 and received by the Indiana Department of Education on August 9, 2000. The Student's Petition for Review was received on August 21, 2000. On August 28, 2000, the School requested an extension of time in order to prepare and file a Response to the Petition for Review. The BSEA, by order dated August 28, 2000, granted the School until close of business on September 15, 2000, to prepare a Response to the Petition for Review. On September 14, 2000, the School filed its Response to the Petition for Review.

The BSEA notified the parties by order dated September 5, 2000, that it would conduct its review on September 28, 2000, beginning at 10:00 a.m., but without oral argument and without the presence of the parties. 511 IAC 7-15-6(k).

Student's Petition for Review

The Student's Petition for Review was timely filed on August 21, 2000. The Student appealed based upon the following objections:

IHO's Findings of Fact

The Student objects to Findings of Fact #6 and #8.

The Student objects to Finding of Fact #6 on the grounds that the IHO wrote "overall language development needs were in the area of functional application in a naturalistic environment" and yet the speech pathologist who currently worked with the Student attested that her goals were to be carried out by herself in the speech therapy setting. The Student claims that the thrust of the educational plan of full inclusion for the Student to achieve learning in the "real world" rather than in a self contained classroom has not been implemented. The Student does not disagree that the naturalistic environment is

the best for learning, but claims that this recommendation was not even evident in either the Individualized Education Program (IEP) document or the history of the actual therapy.

The Student objects to Findings of Fact #8 on the grounds that the IHO wrote “current academic skills range from preschool to primary...with the lowest functioning noted in the language related areas.” The Student claims the Student’s highest levels of tested performance was in reading and writing. Test scores were disputed at the case conference by the Parents as invalid and further testing was requested and denied by the School. The Student claims that previous testing done at the three year reevaluation also reported that the Student’s highest levels of achievement were in the language areas (4/97, reading 4.0).

IHO’s Conclusions of Law

The Student objects to Conclusion of Law #4 on the ground that the IHO wrote “there is no reason to believe that the level of services of the Individual Education Plan generated at the May 11, 2000, conference meeting, are not adequate to provide educational benefit to the student...” The Student claims this was not the question posed as the issue of dispute as any services of speech therapy would be of educational benefit to the Student. The Student states that seeing a speech therapist once a year could provide educational benefit but would not necessarily meet the needs of adequacy and appropriateness. The Student claims the IHO failed to address the central issue which was whether once weekly intervention was the adequate and useful recommendation for the needs of the Student.

The Student objects to Conclusion of Law #4 on the ground that the IHO wrote “[e]vidence and/or direct testimony demonstrated that, due to the age of the student (developmental and chronological), the progress of the student (or in this case, the lack of significant change in speech/articulation related goals for a significant period), and the documented need for the student’s program to demonstrate retention to achieved speech skills and/or to engage in developing ‘repair skills’ in the functional use of his communication abilities, there is no reason to believe that the level of services in the Individual

Education Plan generated at the May 11, 2000, case conference meeting, are not adequate to provide educational benefit ...” The Student claims that the only evidence given was that “lack of significant change in speech/articulation related goals for a significant period.” The Student claims that the IHO wrote that there was a “documented need for the student’s program to demonstrate retention of achieved speech skills ...” The Student claims that this need was never addressed in the Student’s current speech goals as suggested by the school speech pathologist and was only added at the request of the parent. The Student claims that it was added to the twelve goals of the school speech pathologist. The Student claims there was no plan or program of carryover of speech skills into areas of “functional use of communication abilities,” or the use of any peers or general education teachers to implement these goals.

The relief sought includes:

A request that the Student receive speech therapy twice weekly and not once weekly for the 2000-2001 school year.

School’s Response to the Petition for Review

The School filed its Response to the Petition for Review on September 14, 2000. In summary, the School argues that: 1) 511 IAC 7-30-4(d) requires that the petition for review be filed simultaneously with the Indiana Department of Education and the opposing party. The School was not served by the Student, and the School requests that the petition be dismissed in whole, for failure to comply with this provision; 2) the IHO’s Findings of Fact, Conclusions of Law and Order should not be disturbed because all are supported by substantial evidence and applicable law.

1. Finding of Fact #6

The School claims that the Student has mischaracterized the speech pathologist’s testimony.

The School claims that the speech language pathologist testified and the IHO clarified at the hearing that the goals would be appropriate for a speech language pathologist to work on. The

School claims that the Student seems to be mixing goals and objectives with methodology

which is not typically addressed in an IEP.

2. Finding of Fact #8

The School claims that the Student appears to argue that Finding of Fact #8 is unsupported by substantial evidence. The School claims that the Student's last Weschsler Individual Achievement Test (WIAT) provided scores around the second and third grade level in reading and writing and the kindergarten level in math, however, with a calculator the math score was equivalent to a fifth grade level.

3. Conclusion of Law #4

The School claims that the Student's objection to the IHO's Conclusion of Law #4 is mere semantics and not a substantive argument. The School claims that the issue is what services are adequate to provide educational benefit and not what would be the optimum services for the Student.

REVIEW BY THE BOARD OF SPECIAL EDUCATION APPEALS

The BSEA convened on Thursday, September 28, 2000, to review the Petition for Review and the Response thereto in consideration of the record as a whole. All members were present and had reviewed the record.

In consideration of the record, the Petition for Review, and the Response thereto, the BSEA now finds as follows:

Combined Findings of Fact and Conclusions of Law

1. The BSEA has jurisdiction in the matter pursuant to 511 IAC 7-15-6.
2. The BSEA accepts Finding of Fact #6 as written.
3. The BSEA accepts Finding of Fact #8 as written.
4. The BSEA accepts Conclusion of Law #4 as written.

Orders of the Indiana Board of Special Education Appeals

In consideration of the above Combined Findings of Fact and Conclusions of Law, the Indiana Board of Special Education Appeals now holds:

1. The School's request for dismissal is denied.
2. The BSEA accepts the IHO's order as written.
3. Any other matters not specifically addressed by the BSEA in this written decision are hereby deemed denied or dismissed.

Date: September 28, 2000

/s/Raymond W. Quist

Raymond W. Quist, Chair
Board of Special Education Appeals

Appeal Right

Any party aggrieved by the written decision of the Indiana Board of Special Education Appeals has thirty (30) calendar days from receipt of this decision to request judicial appeal from a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5 and 511 IAC 7-15-6(p).